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No. 87-1136

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

AMERICAN COMMERCIAL LINES, INC.
MAC TOWING, INC. and
M/V "ROBERT GREENE"
PETITIONERS

versus

GEORGE and RUTH DAVIS
RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the special concern shown by the Courts of this country for the welfare of seamen deprive employers of injured seamen equal protection of the law.

2. When a genuine issue of material fact exists regarding the validity of a seaman's release, is Summary Judgment appropriate.

LIST OF PARTIES AND DESIGNATION OF CORPORATE RELATIONSHIPS (RULE 28.1)

George and Ruth Davis, as respondents in this proceeding, state that:

This is their original designation of corporate relationships.

The parties to the proceedings below were the petitioners American Commercial Lines, Inc.; Mac Towing, Inc.; and M/V ROBERT GREENE; and the respondents George and Ruth Davis.

The respondents have no corporate affiliations.

Dated: January 25, 1988

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STATEMENT OF THE CASE

I. Statement of the Issues

This petition involves the issue of whether the District Court was in a position, upon Motion for Summary Judgment, to conclude there was no genuine issue of material fact concerning the validity of a plaintiff Jones Act Seaman's release.

The petitioners/employers argue that the treatment of seamen (i.e., careful scrutiny of releases) see e.g., *Garrett* v. *Moore-McCormack*, 317 U.S. 239, 246-48, 63 S. Ct. 246, 251-52, 87 L. Ed. 239, 244-45 (1942), is contrasted with the treatment of all other workers' releases under Federal Law. As will be discussed *infra*, the treatment of seamen releases is consistent with the protection afforded other workers by Federal Law including, but not limited to, those covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., and also by workers covered under state compensation systems.

II. Statement of Facts

George Davis was hired as a seaman, in September, 1982 to work as a deckhand. On November 2, 1983, he injured his right wrist while attempting to secure a wire to a tow that had been picked up by the vessel on which he was working. Petitioners later offered Davis and his wife $7,500.00 in return for their release on all claims that they might have. On August 8, 1984, the Davises, unaccompanied by counsel, went to the law office of petitioners' attorney for the purpose of executing a settlement and release. At the time the settlement was consumated the respondents were unaware of the contents of several medical reports obtained by the petitioners, and did not have a full understanding of the rights relinquished by the release. Further, the consideration for the settlement was inadequate on its face.

The respondents signed a release that the petitioners now claim bars any action they may have. The respondents, however, never fully understood what rights they were relinquishing when they signed the release.

On November 18, 1985, the Davises filed this action seeking compensation under the General Maritime Laws and the Jones Act, 46 U.S.C. 688. A timely jury demand was made which was not waived at any time in the proceedings.

The petitioners herein moved to dismiss the Davises' suit arguing that it was barred by their earlier release. Petitioners also filed for Rule 11 Sanctions against the Davises and their attorneys for filing this cause of action.

Following a Magistrate hearing and the District Court's Order, the respondents appealed the dismissal of their cause of action to the Sixth Circuit Court of Appeals.

The petitioners' allegation (see Petitioner's Writ, pg. 6) that the Davises appealed the dismissal solely on the grounds that the validity of a seaman's release must always be left for the jury and can never be decided by a Summary Judgment is inaccurate. In fact, the Davises appealed the dismissal on the

basis that the trial Court and Magistrate had not given sufficient weight to the fact that the plaintiffs/respondents were not represented by counsel at the time of the signing of the seaman's release, were unaware of the content of medical reports generated by treating physicians which had been furnished to the defendants, did not have a full understanding of what rights they were relinquishing, and that the consideration for the settlement of the case was, on its face, inadequate.

At no time did the Davises argue that the validity of a seaman's release could never be decided by Summary Judgment. Respondents' argument was based upon the facts and circumstances of this particular case. Supporting affidavits clearly indicated that an issue of fact for the trier of fact remained, making Summary Judgment inappropriate.

THERE ARE NO CONTROLLING NOR SPECIAL REASONS TO GRANT THIS WRIT OF CERTIORARI

I) SUMMARY

Federal Courts have, since the early 19th century, placed the burden upon one who sets up a seaman's release to show that it was executed freely without deception or coercion, and that it was made by the seaman with full understanding of his rights. M. Norris, *Law of Seamen* (3rd Ed.) Section 504. Few areas of law are as settled among the Circuits. Courts have, for many years, submitted the issue of the validity of a seaman's release to the trier of fact. *Guerrero* v. *American Hawaiian Steamship Company*, 222 F.2d 238 (9th Cir. 1955).

The supervision given a seaman's release is consistent with the treatment given to releases executed by workers covered by both Federal and State compensation systems.

The conditions which compelled the Supreme Court to hold seamen as "wards of the Court" have not significantly

changed. Seamen as a class of men are in need of the Court's protection.

The employer who reaps the benefit of a seaman's work which is performed under the most difficult of circumstances for modest wages is not deprived of equal protection under the law by being required to prove the fairness of a release.

A. FEDERAL MARITIME LAW REQUIRES SUBMISSION OF THE VALIDITY OF A SEAMAN'S RELEASE TO THE TRIER OF FACT.

The petitioners argue to set aside the doctrine that treats seamen as "wards of admiralty" deserving special judicial protection. In support thereof, the petitioners/employers cite *City of Cleburne, Texas* v. *Cleburne Living Center*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313, 320 (1985) (interpretation of Texas statute requiring special permission for housing of retarded persons) and *Metropolitan Life Insurance Company* v. *Ward*, 470 U.S. 869, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985) (state statute taxing out of state insurance company at a higher rate than domestic insurance company), neither of which arise under the Jones Act, nor have any relationship to Admiralty whatsoever.

The petitioners accurately cite the consistent treatment given to seamen by the Federal Courts in the United States. As early as 1823 a Federal Court stated that seamen were to be protected from entering into unfair arrangements. *Harden* v. *Gordon*, 11 F. Cas. 480 (C.D. Me. 1823) (No. 6047). Over one hundred years later the Supreme Court in *Garrett* v. *Moore-McCormack, Inc., supra*, (a seaman's release case), reaffirmed the vaidity of preferred and special treatment given to seamen and established the standards by which such bargains were to be judged.

> Such releases are subject to careful scrutiny . . . we hold, therefore, that the burden is upon one who sets up a seamen's release to show that it was executed freely,

> without deception or coercion, and that it was made by the seaman with full understanding of his rights. [footnotes omitted]

The seaman should be represented by counsel of his own choice experienced in the matter at hand. The defendant must make the seaman clearly aware of his right to obtain such counsel; a release signed through reliance on the recommendation of the defendant's attorney is entitled to little weight. I. Hall & A. Sann, 1B *Benedict on Admiralty*, Section 6, 1-53.

Releases signed by seamen, the "wards of admiralty" are given the most careful scrutiny. The burden is on the shipowner to show that the seaman signed the release with a full understanding of his rights and the effect of his action. *Halliburton* v. *Ocean Drilling and Exploration*, 620 F.2d 444 (5th Cir. 1980); *Aguiluz-Nunez* v. *Carnival Cruise Lines, Inc.*, 584 F.2d 76 (5th Cir. 1978).

II. SEAMAN SETTLEMENTS AND RELEASES ARE TREATED CONSISTENTLY WITH OTHER WORKERS' CLAIMS.

The petitioner asserts that the consideration given seamen releases and settlements is different from all other workers covered by Federal Law. In fact, many compensation systems, some under Federal Law, including the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq. (hereinafter referred to as Longshore Act), set forth more stringent guidelines for settlement of workers' claims than is required for seamen.

To settle a claim under the Longshore Act, one must submit a settlement proposal to the Deputy Commissioner for final approval. 20 CFR 702.241, sets out what steps employers and/or claimants must follow to obtain guided approval of any proposed settlement award.

Under the Kentucky Workers' Compensation Act, before a settlement agreement becomes enforceable the settlement memorandum must be filed with and approved by the Workers' Compensation Board. Kentucky Revised Statutes 342.265. This provision allows the Board to review all settlements and protect the interests of employees. *Skaggs* v. *Wood Mosaic Corp.*, 428 S.W. 2d 617 (1968, Ky.). Most other states have similar requirements.

In many respects the evaluation given a maritime settlement is less burdensome than those required by Federal and State compensation systems.

The Sixth Circuit holding at Bar did not require Court approval of settlement, did not require that counsel be obtained for seamen, and did not mandate that all settlements would, by definition, be subject to attack.

The Sixth Circuit held that considering the presumptions against the movant in Federal Rule 56, and the burden placed upon one presenting a seaman's release, an issue of fact remained making Summary Judgment inappropriate. The Court of Appeals holding is consistent with the protection afforded other workers covered by both state and federal laws.

III. GIVEN PRESENT CIRCUMSTANCES, THE "WARDS OF ADMIRALTY" DOCTRINE SHOULD NOT BE DISTURBED.

The reasoning behind the Court's decision in *Garrett* v. *Moore-McCormack*, *supra*, *Harden* v. *Gordon*, *supra*, and their progeny is as appropriate today as when originally written.

> Seamen are by the peculiarity of their lives liable to sudden sickness from the change of climate, exposure to perils, and exhausting labor. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. 11 F. Cas. at 483, 485.

The life and requirements of being a seaman is as arduous as ever. Today's seaman finds himself in an environment of decreasing Union strength, decreasing opportunities of employment, increasing competition for fewer jobs and reduced wages. In addition to the natural perils of the climate, today's seaman is faced with a plethora of dangers including everything from chlorine gas in the air to diesel fuel on the water. For these perils seamen receive modest wages.

As a result, the profession attracts those who are ignorant, improvident, and necessitous, a most useful and necessary class of persons to a Maritime and commercial people, both in peace and war, gallant and fearless of personal danger, but wholly unable to defend their rights against the superior knowledge, sagacity, and wealth of their employers. *The David Pratt*, 7 F. Cas. 22, 24 (D. Me. 1839) (No. 3597). The "ward of admiralty" doctrine is valid and should not be abandoned.

IV. THERE IS NO VIOLATION OF AN EMPLOYER'S RIGHT TO EQUAL PROTECTION UNDER THE LAW BY SUBMITTING THE VALIDITY OF A SEAMAN'S RELEASE TO A TRIER OF FACT.

The petitioners cite *City of Cleburne, Texas* v. *Cleburn Living Center, supra*, as authority in its argument to abandon the special protection given to seamen. In *Cleburne* the Court in fact protected a preferred classification by prohibiting state statutes which place burdensome zoning restrictions on the mentally retarded. The court held that mentally retarded persons, who have a reduced ability to cope with and function in the everyday world, are therefore different from other persons, and that the state's interest in dealing with and providing for them is plainly a legitimate one. *Cleburne* at 442.

The petitioners further argue that, in effect, affording seamen additional protection will work to their detriment. One applauds the altruistic motives of the petitioners in at-

tempting to create a system whereby its claims agents can work completely unaffected by court supervision.

The respondents respectfully submit that the petitioners true motivation might be the continuation of its method of settlement wherein injured, crippled and desperate seamen are denied an opportunity for a fair settlement and/or a day in court by the ever present claims manager who is more than willing to settle a cause of action for pennies on the dollar.

A fair and equitable settlement agreement will withstand an evaluation by a competent, trained, Maritime attorney working for a reasonable hourly fee.

It has long been the practice in the industry by careful employers to obtain, at the company's expense, trained counsel to work for a reasonable hourly fee to review all proposed settlements and/or to seek court approval of settlements through a friendly lawsuit or some other mechanism.

While such a policy might be advisable, it goes beyond the minimal requirements as contained in the Sixth Circuit's decision in the case at Bar. The Sixth Circuit holding merely indicates that the validity of the seaman's release at Bar is an issue of fact for the trier of fact. The Court of Appeals did not overturn the seaman's release, but merely acknowledged that a genuine issue of material fact remained.

CONCLUSION

The Court of Appeals was correct in finding that a material issue of fact remained as to the validity of the seaman's release. This finding is consistent with hundreds of years of jurisprudential history in the United States.

Such a finding is similarly consistent with the protection afforded other workers covered by State and Federal compensation programs.

The "ward of admiralty" concept is valid, should not be abandoned, and the adherence to this principle is not violative of an employer's right to equal protection under the law.

The respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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